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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 NATIONAL UNION FIRE
11 INSURANCE COMPANY OF
12 PITTSBURGH PA,

13 Plaintiff,

14 v.

15 ZILLOW, INC.,

Defendant.

CASE NO. C16-1461JLR

ORDER ON REMAND
FOLLOWING APPEAL

16 Before the court is the opinion and mandate of the Ninth Circuit Court of Appeals
17 (1) affirming in part and reversing in part the court's order entering judgment on the
18 pleadings in favor of Plaintiff National Union Fire Insurance Company of Pittsburgh, Pa.
19 ("National Union") and dismissing Defendant Zillow, Inc.'s ("Zillow") counterclaim, and
20 (2) remanding this matter for further proceedings. (9th Cir. Mem. Op. (Dkt. # 33); 9th
21 Cir. Mandate (Dkt. # 36); *see also* 4/13/17 Order (Dkt. # 25).)

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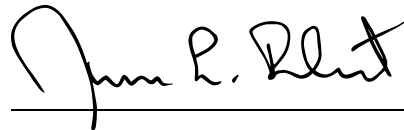
1 The Ninth Circuit reversed this court’s determination that Zillow’s professional
2 liability insurance policy (“the Policy”) did not cover a copyright-infringement lawsuit
3 that VHT, Inc. brought against Zillow during the Policy period (“the VHT Action”). (*See*
4 9th Cir. Mem. Op. at 2-5.) Accordingly, the court VACATES the portion of its April 13,
5 2017, order concluding that the Policy provides no coverage for the VHT Action. (*See*
6 4/13/17 Order at 9-21.) The court also VACATES the portion of the judgment awarding
7 Plaintiff National Union Fire Insurance Company of Pittsburgh, Pa. (“National Union”)
8 judgment on the pleadings. (*See* Judgment (Dkt. # 26).) The Ninth Circuit further
9 remanded “for consideration of any admissible extrinsic evidence of the parties’ intent to
10 resolve the ambiguity in the coverage provision.” (*See* 9th Cir. Mem. Op. at 5.)

11 The Ninth Circuit affirmed the court’s dismissal of Zillow’s breach-of-contract
12 counterclaim but reversed the court’s decision denying Zillow leave to amend its
13 counterclaim. (*See* 9th Cir. Op. at 5-7.) The Ninth Circuit remanded for the court to
14 “reconsider whether amendment is appropriate.” (*Id.* at 7.) Accordingly, the court
15 VACATES the portion of its April 13, 2017, order denying Zillow leave to amend its
16 counterclaim (*see* Order at 21-22) and ORDERS Zillow to file an amended counterclaim,
17 if appropriate, within 20 days of the date of this order. If Zillow fails to timely file an
18 amended counterclaim, the court may dismiss Zillow’s counterclaim with prejudice and
19 without further notice. Because the court grants Zillow an opportunity to amend its
20 counterclaim, the court also VACATES the portion of the judgment dismissing Zillow’s
21 counterclaim. (*See* Judgment.)

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1 Finally, the court also ORDERS the parties to file, within 14 days of the filing date
2 of this order, a joint status report proposing how the court should proceed on remand.
3 The parties should attempt to agree in good faith on a unified approach. If they cannot so
4 agree, they may outline their disparate suggestions in the joint status report.

5 Dated this 17th day of April, 2020.

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8 JAMES L. ROBART
9 United States District Judge
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